

AMENDED IN ASSEMBLY MAY 7, 2015
AMENDED IN ASSEMBLY MARCH 26, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 813

Introduced by Assembly Member Gonzalez

February 26, 2015

An act to add Section 1473.7 to the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 813, as amended, Gonzalez. Criminal procedure: postconviction ~~relief~~ *relief*.

Under existing law, although persons not presently restrained of liberty may seek certain types of relief from the disabilities of a conviction, the writ of habeas corpus is generally not available to them. Existing law creates an explicit right for a person no longer unlawfully imprisoned or restrained to prosecute a motion to vacate a judgment based on newly obtained evidence of fraud or misconduct by a government official, as specified.

This bill would create an explicit right for a person no longer imprisoned or restrained to prosecute a motion to vacate a conviction or sentence based on error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of the conviction, ~~a plea of guilty or nolo contendere~~, or based on newly discovered evidence of actual innocence, as specified. The bill would require a court to grant the motion if the moving party establishes a ground for relief, by a preponderance of the evidence.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1473.7 is added to the Penal Code, to
2 read:
3 1473.7. (a) A person no longer imprisoned or restrained may
4 prosecute a motion to vacate a conviction or sentence for ~~any~~ *either*
5 of the following reasons:
6 (1) The conviction or sentence is legally invalid due to error
7 damaging the moving party's ability to meaningfully understand,
8 defend against, or knowingly accept the actual or potential adverse
9 immigration consequences of ~~the conviction~~ *a plea of guilty or*
10 *nolo contendere*.
11 (2) Newly discovered evidence of actual innocence exists that
12 requires vacation of the conviction or sentence as a matter of law
13 or in the interests of justice.
14 (b) A motion pursuant to this section shall be filed with
15 reasonable diligence after the later of the following:
16 (1) The date the moving party receives a notice to appear in
17 immigration court or other notice from immigration authorities
18 that asserts the conviction or sentence as a basis for removal.
19 (2) The date a removal order against the moving party, based
20 on the existence of the conviction or sentence, becomes final.
21 (3) The date the moving party discovered, or could have
22 discovered with the exercise of due diligence, the evidence that
23 provides a basis for relief under this section.
24 (4) The effective date of this section.
25 (c) All motions shall be entitled to a hearing. At the request of
26 the moving party, the court may hold the hearing without the
27 personal presence of the moving party if counsel for the moving
28 party is present and the court finds good cause as to why the
29 moving party cannot be present.
30 (d) When ruling on the motion:
31 (1) The court shall grant the motion to vacate the conviction or
32 sentence if the moving party establishes, by a preponderance of
33 the evidence, the existence of any of the grounds for relief specified
34 in subdivision (a).

1 (2) In granting or denying the motion, the court shall make
2 specific findings of fact and conclusions of law on all issues
3 presented.

4 (3) If the court grants the motion to vacate a conviction or
5 sentence obtained through a plea of guilty or nolo contendere, the
6 court ~~must~~ *shall* allow the moving party to withdraw the plea.

7 (e) An order granting or denying the motion is appealable under
8 subdivision (b) of Section 1237 as an order after judgment affecting
9 the substantial rights of a party.

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